

**BOARD OF OPTOMETRY
BOARD MEETING
FEBRUARY 12, 2008**

TIME AND PLACE: The meeting was called to order at 12:12 p.m. on Tuesday, February 12, 2008 at the Department of Health Professions, The Perimeter Center, 9960 Mayland Drive, 2nd Floor, Conference Room 4, Richmond, VA.

PRESIDING OFFICER: David H. Hettler, O.D, President

MEMBERS PRESENT: Gregory P. Jellenek, O.D.
Jonathan R. Noble, O.D.
W. Ernest Schlabach, Jr., O.D.
Jacquelyn S. Thomas, Citizen Member

MEMBERS NOT PRESENT: Paula H. Boone, O.D.

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director for the Board
Amy Marschean, Senior Assistant Attorney General, Board Counsel
Emily Wingfield, Chief Deputy Director
Carol Stamey, Operations Manager

OTHERS PRESENT: Bill Ferguson, Board for Opticians

QUORUM: With five members of the Board present, a quorum was established.

PUBLIC COMMENT: No public comment was presented.

REVIEW AND APPROVAL OF AGENDA: The order of the agenda was revised to hear Ms. Yeatts Legislative/Regulatory update prior to approval of the minutes.

LEGISLATIVE/REGULATORY UPDATE: Ms. Yeatts presented an update of the 2008 legislation that is relevant to the agency. She noted that there was no proposed legislation specific to optometry. The legislation is incorporated into the minutes as Attachment 1.

Ms. Yeatts reported that the NOIRA on the unprofessional conduct regulations will be published on February 18, 2008 for public comment for the next thirty days. Ms. Yeatts also reported that the proposed NOIRA on the CE Regulations were at the Secretary's office for a sixty day public comment period and public hearing.

VIRGINIA PERFORMS UPDATE:

Ms. Wingfield briefed the Board on the agency's current performance measures. She reported that the agency's rating was at 100% on processing licensure applications, at a rating of 98% on customer satisfaction and a rating of 50% on the 250-day patient care case resolutions. Ms. Wingfield further reported that the in-house case teams were addressing cases that are one year and older. Additionally, she reported that new cases entering the system are being tracked under a separate system. Ms. Wingfield reported that the compliance unit had been redeployed and its personnel assigned to the various boards and enforcement to free up resources to enhance case resolution. Specifically, she introduced Angela Henderson, from the compliance unit, who would be assisting the Boards of Optometry and Health Professions with case compliance and research. Ms. Wingfield reported that the case processing teams were striving for better efficiencies in investigative skills, the retrieval of case records, scanning of records and utilization of streamlined report forms through templates.

APPROVAL OF MINUTES:

On properly seconded motion by Dr. Schlabach, the Board voted unanimously to approve the minutes of the August 6, 2007, September 26, 2007, November 6, 2007 and December 6, 2007 meetings.

DISCUSSION ITEMS:

Sanction Reference Study Training

Neal Kauder presented a training session via slide presentation on the sanctions reference points. The slide presentation is incorporated into the minutes as Attachment 2.

Standards of Practice Proposed Amendment

Dr. Hettler expressed concern that Section 18 VAC 105-20-45 of the optometry regulations regarding eye examinations may be out of date and lack TPA guidelines. The matter was remanded to the Legislative/Regulatory Review Committee for recommendations to the full board. Ms. Yeatts also noted that the current approved NOIRA on Unprofessional Conduct could address the comprehensive eye examination regulations.

Staff was directed to schedule the committee meeting prior to the next full board meeting.

Professional Designation Regulations Clarification

Dr. Schlabach noted the need for clarification of Section 18 VAC 105-20-50.B.1.A of the optometry regulations. Specifically, he requested clarification of the intent that the

Board had in requiring an optometrist who registers a professional designation practice at "any" location. The matter was remanded to the Legislative/Regulatory Review Committee for review and recommendations.

COMMITTEE REPORTS:

PD Committee

The Committee had no report to present.

Legislative/Regulatory Review Committee

Dr. Hettler reported that the Committee had no old items to present.

Newsletter Committee

The Committee requested that the next newsletter mail out in October prior to license renewal.

Credentials Committee

Dr. Hettler reported that he had reviewed a reinstatement application that was questionable. Specifically, that the applicant had obtained continuing education that was not in compliance with Virginia's continuing education regulations.

EXECUTIVE DIRECTOR'S REPORT:

Dr. Carter reported on the Board's case and licensure statistics and budget.

Dr. Carter reported that at its last meeting, the Board requested that staff research the shortage of optometrists in Virginia. She reported that she had contacted Joseph DeFilippo with the State Council on Higher Education for information. Mr. DeFilippo advised that the optometry scholarship funding comes through the Appropriations Act and would require General Assembly action. Dr. Carter noted that the Virginia Optometric Association should address this issue.

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PRESIDENT'S REPORT:

Dr. Hettler overviewed the agency's revised directive to reduce expenditures, including new hires and large purchases.

Dr. Schlabach reported that he would need approval to attend the June ARBO meeting. He was informed to submit his travel request as soon as possible.

Dr. Hettler also reported that Dr. Carter was now serving as the Executive Director for the Board of Veterinary Medicine.

Lastly, Dr. Hettler informed the Board that Dr. Boone may be out for a while due to medical reasons.

NEW BUSINESS:

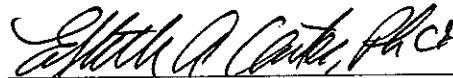
Dr. Hettler reported that he had received an inquiry regarding whether or not an optometrist could perform fluorescein angiography and bill for it. The matter was referred to the CPT Code Committee for research and recommendation back to the full board.

ADJOURNMENT:

The Board concluded its meeting at 1:25 p.m.



David H. Hettler, O.D.
President



Elizabeth A. Carter, Ph.D.
Executive Director

Report of 2008 General Assembly

Board of Optometry

HB 85 Prescription Medication Donation Program; established.

Summary as passed House:

Donation of prescription medications. Requires the Board of Pharmacy to promulgate regulations to establish a Prescription Drug Donation Program to accept certain unused previously dispensed prescription drugs, and re-dispense such drugs to patients of clinics organized in whole or in part for the delivery of health care services to the indigent. This bill requires the Board to promulgate regulations to implement its provisions within 280 days of enactment. This bill also provides that, notwithstanding the due course effective date of the bill, provisions of current law shall remain in effect until regulations promulgated by the Board for the establishment of the Program become effective.

Patrons: Landes; Senator: Ruff

01/18/08 House: VOTE: --- PASSAGE (98-Y 0-N)
01/18/08 House: Communicated to Senate
01/21/08 Senate: Constitutional reading dispensed
01/21/08 Senate: Referred to Committee on Education and Health
02/12/08 Senate: Assigned Education sub: Health Care

HB 129 Physicians; what constitutes medical practice.

Summary as introduced:

Medical professions; what constitutes practice. Adds "physician" to list of words that, when used in connection with a person's name, creates a presumption of intent to practice healing arts. This bill adds the requirement that no person other than those who have received a degree as a medical doctor or doctor of osteopathy shall use the term "physician" in connection with his name or practice.

Patron: Purkey

12/20/07 House: Prefiled and ordered printed; offered 01/09/08 088351692
12/20/07 House: Referred to Committee on Health, Welfare and Institutions
01/11/08 House: Impact statement from DPB (HB129)
01/15/08 House: Stricken from docket by Health, Welfare and Institutions

HB 403 Health care providers; those responding to disaster immune from liability.

Summary as introduced:

Health care provider liability protections. Provides that, in the absence of gross negligence or willful misconduct, health care providers who respond to a disaster are immune from civil liability for any injury or wrongful death arising from the delivery or withholding of health care. This immunity only applies if a state or local emergency has been or is subsequently declared in response to such a disaster. This bill further provides that the failure of a health care provider to deliver the same level or manner of care that would be delivered under nondisaster circumstances does not constitute a breach of duty by such provider where the failure results from a lack of necessary resources. The bill also allows persons who hold licenses or certificates evidencing their professional or mechanical skills who render aid involving that skill during a disaster to receive reimbursement for their actual and necessary expenses. The bill also combines the definitions of the terms "man-made disaster" and "natural disaster" as contained in the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 into the term "disaster" and adds the term "communicable disease of public health threat" to the definition. The bill also expands when immunity attaches for health care providers who abandon patients in order to respond to a disaster to include disasters, emergencies, and major disasters. This bill also makes technical amendments.

Patron: Hamilton

02/01/08 House: Read third time and passed House BLOCK VOTE (99-Y 0-N)
02/01/08 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N)
02/01/08 House: Communicated to Senate
02/04/08 Senate: Constitutional reading dispensed
02/04/08 Senate: Referred to Committee on Education and Health

HB 823 Oripavine and lisdexamfetamine; adds to list of Schedule II drugs.

Summary as introduced:

Schedule II drugs; oripavine and lisdexamfetamine. Adds oripavine and lisdexamfetamine to the list of Schedule II drugs.

Patron: Morgan

01/18/08 House: Read third time and passed House BLOCK VOTE (98-Y 0-N)
01/18/08 House: VOTE: BLOCK VOTE PASSAGE (98-Y 0-N)
01/18/08 House: Communicated to Senate
01/21/08 Senate: Constitutional reading dispensed
01/21/08 Senate: Referred to Committee on Education and Health

HB 1222 Charitable medical events; lack of notice to licensing board.

Summary as passed House:

Charitable medical events; lack of notice. Amends criteria which a practitioner of the healing arts must meet in order to render free health care to an underserved population of Virginia, to require that the practitioner to notify the Board of the dates and location of services provided at

least 5 business days prior to the voluntary provision of services. This bill also provides that the board shall allow a practitioner of the healing who meets the statutory criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state.

Patron: Bowling

01/28/08 House: VOTE: --- PASSAGE (99-Y 0-N)
01/28/08 House: Communicated to Senate
01/29/08 Senate: Constitutional reading dispensed
01/29/08 Senate: Referred to Committee on Education and Health
02/12/08 Senate: Assigned Education sub: Health Licensing

HJ 172 Vision care services and products; JLARC to study impact of current law impeding accessibility.

Summary as introduced:

Study; accessibility to vision care services and products by Virginia consumers; report. Directs the Joint Legislative Audit and Review Commission to study the impact of current law impeding accessibility to vision care services and products by Virginia consumers. In conducting its study, the Joint Legislative Audit and Review Commission is to (i) review the independent studies reported by and conducted by the Federal Trade Commission and (ii) review complaints relating to quality issues against all optometrists in selected states that do not have commercial and mercantile location prohibitions similar to those in Virginia.

Patrons: Putney, Nutter, O'Bannon, Purkey, Shannon and Sickles

01/09/08 House: Prefiled and ordered printed; offered 01/09/08 085014696
01/09/08 House: Referred to Committee on Rules

HJ 193 Vision care services and products; JLARC to study impact of current law impeding accessibility.

Summary as introduced:

Study; accessibility to vision care services and products by Virginia consumers; report. Directs the Joint Legislative Audit and Review Commission to study the impact of current law impeding accessibility to vision care services and products by Virginia consumers. In conducting its study, the Joint Legislative Audit and Review Commission is to (i) review the independent studies reported by and conducted by the Federal Trade Commission and (ii) review complaints relating to quality issues against all optometrists in selected states that do not have commercial and mercantile location prohibitions similar to those in Virginia.

The Commission shall submit its findings and recommendations to the 2009 Session and its final findings and recommendations to the 2010 Session of the General Assembly.

Patron: Sickles

01/09/08 House: Prefiled and ordered printed; offered 01/09/08 084185736
01/09/08 House: Referred to Committee on Rules

SB 218 Health Professions, Department of; investigative procedures.

Summary as introduced:

Department of Health Professions; investigative procedures. Clarifies that the Director and investigative personnel may request and obtain patient records, business records, papers, and physical or other evidence in the course of any investigation or issue subpoenas requiring the production of such evidence.

Patron: Edwards

01/22/08 Senate: Read third time and passed Senate (38-Y 0-N)
01/22/08 Senate: Communicated to House
02/11/08 House: Placed on Calendar
02/11/08 House: Read first time
02/11/08 House: Referred to Committee on Health, Welfare and Institutions

SJ 128 Health care professionals, licensed; Joint Commission on Health Care to study competence.

Summary as passed Senate:

Study; JCHC to study continuing competency of health care professionals; report. Directs the Joint Commission on Health Care to study the feasibility, advisability, and necessity of considering the competence of licensed health care professionals who are not granted deemed status as a condition of license renewal.

Patron: Houck

02/05/08 Senate: Engrossed by Senate - committee substitute SJ128S1
02/06/08 Senate: Read third time and agreed to by Senate by voice vote
02/06/08 Senate: Communicated to House
02/11/08 House: Placed on Calendar
02/11/08 House: Referred to Committee on Rules